



International Chamber of Commerce

The world business organization

ICC comments on Harnessing Freedom of Investment for Green Growth

As the world business organization and the only representative body that speaks with authority of enterprises from all sectors in every part of the world, the International Chamber of Commerce (ICC) underscores the private sector's key role in contributing to the majority of investments essential to greening economies. The private sector is indispensable to achieve green growth. Through domestic and foreign direct investment (FDI), the private sector is essential in developing and diffusing the innovative products, processes, technologies, and services that generate and will continue to generate sustainable solutions. For example, to halve global emissions by 2050, the United Nations and the International Energy Agency (IEA) estimate that the private sector will contribute more than 80% of the predicted \$1 trillion in climate finance required.

Part of the challenge and opportunity for business is to understand the concrete possibilities of a "Green Economy" with its investment opportunities and risks for both, developed and developing countries. While no single agreed definition or set of financial measurements as to what exactly constitutes "Green Growth/Economy" exists, the ICC Green Economy Task Force defines "green economy" as follows:

"The business community believes that the term "green economy" is embedded in the broader sustainable development concept. The "green economy" is described as an economy in which economic growth and environmental sustainability work together in a mutually reinforcing fashion while supporting progress on social development. Business and industry have a crucial role in delivering the economically viable products, processes, technologies, services, and solutions required for the transition to a Green Economy."

Resource efficient products, processes, technologies, services, and solutions, such as energy and eco-efficient manufacturing, low-carbon technologies, building, or transport infrastructure require large and long-term investments. Having the right investment framework in place is fundamental for business. A comprehensive and balanced investment framework should be clear, stable, and predictable so that investors trust that policy goals and incentives will be in place for the duration of the project fostering innovation-led green growth.

In this regard, ICC submits the following comments to the statement on "Harnessing Freedom of Investment for Green Growth":

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5. Support for effective international environmental law

Investment policy makers welcome efforts to provide improved and clearer standards, addressed to both governments and investors, for international environmental responsibilities and policy.

- ICC encourages synergies between compatible multilateral environmental agreements. However, preserving and complementing the independence and tailored nature of multilateral agreements should be a priority.
- The long-term goal of integration will require global economic and social institutions to become more responsive to environmental concerns, but will also require more integration of social and economic dimensions by “environmental” institutions.

6. Vigilance against green protectionism

Governments should reject investment protectionism associated with green growth policies. They should ensure that measures taken to pursue green growth are consistent with their international investment law obligations. They should regularly monitor environmental measures, including state aid, for protectionist intent or effects, including as part of ongoing policy monitoring at the Freedom of Investment Roundtable hosted by the OECD.

- ICC believes that it is crucial to strengthen multilateral trade and investment vital to the economic and technological flows required to implement solutions as well as avoid potential competitive distortions in international trade for the transition to greener economies. We encourage governments to keep options open to greening all sectors.
- ICC emphasizes that environmental regulations should be “least investment-restrictive”. While governments have the right to regulate economic activity with respect to cross-border investment, they should do so in a manner that does not impede unnecessarily the overall cross-border flow of investment and/or disrupt the benefits it brings to home and host countries.
- Where environmental regulations establish a review process, the process should be fact-based, analytically rigorous, and should assure procedural and legal certainty by being timely, transparent and non-discriminatory.
- Governments should ensure effective protection for investors against environmental measures tantamount to expropriation, so-called “creeping expropriation” caused by progressive erosion of the original conditions under which an initial decision was made. In the event such actions take place, expropriations must be carried out in a non-discriminatory fashion and investors must be provided with an acceptable timetable for divestment. Clear guarantees of prompt, adequate and effective compensation should be paid in freely convertible currencies.

8. Updating investment treaty practices regarding the environment

Governments should examine whether their investment treaty practices are up-to-date with regard to environmental concerns and consider including language in investment treaties or environmental treaties to provide guidance about how environmental and investment law goals are to be reconciled.

- Enabling policy frameworks in general and especially for investment will be necessary for making continuous improvement in greening products, services, and production processes while companies remain competitive. Governments play a significant role in defining the conditions for enabling a transition in this regard. ICC believes that the objective should be to foster investments for green growth, rather than mandate them.

9. Investor-state dispute settlement and the environment

Governments should seek to ensure that, where relevant, the ISDS system adequately integrates and balances the goals of international environmental and investment law. To the greatest extent possible, governments should strive to ensure that the ISDS system adequately addresses the application of investment law to environmental measures in a transparent and publicly-accountable manner that allows, where appropriate, participation by interested third parties. In order to ensure a consistent treatment of this issue, governments should consider including provisions on transparency of ISDS in their investment agreements.

- ICC agrees that where possible to enhance effective integration of environmental and investment interests.
- To ensure effective protection of investor rights, ICC strongly believes that investment agreements should include a binding investor-to-state dispute settlement mechanism.
- In addition to general transparency provisions, notably the obligation to publish, notify, and impartially administer all relevant rules and regulations pertaining to the conditions for, restrictions of and changes in the investment regime affecting foreign investors, the right of foreign investors to appeal and review such measures before they become effective should form a part of procedural transparency in the context of any investment framework.

10. Conflict prevention through prior internal review of proposed environmental measures for investment law compliance

Governments should take appropriate measures to review their relevant proposed environmental laws and measures at both national and sub-national levels for compliance with investment law disciplines.

- ICC encourages the long-term goal of compliance of environmental laws and measures at both national and sub-national levels with investment law disciplines. Business delivers a great deal of the jobs, investments, technologies, products and services that drive the changes and innovations needed to move towards green growth. Supportive frameworks and regulations are needed for business to contribute fully to sustainable development and green growth therein. Business is organized in supply and value chains that overlay national structures so cross-border compliance and enforcement are important.

11. Enhancing business' contribution to greening the economy

Governments should incentivise and encourage the positive contribution of companies to green growth.

- While there are several initiatives getting underway in some countries to transition to a greener economy, these are mainly domestic and dependant on public sector support. For the transition to reach its potential and be sustainable, and for companies operating in numerous countries and within global marketplaces, the next steps in this arena will have to address the need to follow an international cooperative approach and transition from public support and subsidy to market-based efforts that are internalized within the private sector.
- The green economy does depend on an engaged and incentivized private sector working in partnership with the public sector. Greening economies is a systemic challenge and a shared responsibility that will require collaborative action between all actors in society – business, governments, civil society and consumers.
- There are a number of different economic instruments for environmental policy, including fiscal instruments and tradable permits, which aim at promoting the production and use of environmentally sound products and processes within a market framework. By enabling industry and consumers to adapt to market signals, such instruments are intended to provide greater flexibility than traditional command and control regulations. Whether taxes, subsidies or other policy instrument are employed, they need to be based on cost-benefit analysis, be transparent, non-distortive and economically, environmentally, and socially effective.
- Skills and capacity are needed when planning the transition to a green economy and jobs. Governments, workers, and enterprises alike will have to meet the skills demands of evolving labor markets, while recognizing that there is no one-size-fits-all solution adequate to the myriad contexts and realities that will emerge. It is critical to develop the right skills for the right jobs and public-private partnerships can hereby play a major role in building the essential knowledge and skills required for the transition to a green economy.
- ICC supports strengthening multilateral trade and investment vital to the economic and technological flows required to implement “green” solutions as well as avoid potential competitive distortions in international trade, especially for developing countries.

12. Spurring green growth through FDI

Governments should contribute to efforts to identify FDI flows in support of green growth, recognise and address hurdles faced by such flows, and assess policy performance in providing a framework to encourage green investment.

- We encourage cooperative efforts to recognize and integrate environmental and equity externalities. While the concepts are clear, in many cases methodologies to evaluate externalities do not exist both because of incomplete scientific understanding and because of lack of publicly accepted methods to value non-market impacts. Accounting measures and standards will be required to understand and measure FDI flows in support of green growth.



- IP protection is an integral part of the broader enabling frameworks that provide the private sector with the confidence needed to engage in direct foreign investment, joint ventures, partnerships and licensing arrangements with local partners, establish local operations and open new research facilities, e.g. critical to the technology deployment needed to deal with climate change.
- Proper IP protection and enforcement are critical prerequisites and we urge governments to strictly enforce them.
- Governments should, in the formulation or modification of policies that affect investment, take the fullest possible account of the need of investors in for stability, continuity and growth.

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The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization, the G20 and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

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